

U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/6.1.3

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MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS
OFFICERS-IN-CHARGE
SERVICE CENTER DIRECTORS
DIRECTOR, ADMINISTRATIVE APPEALS OFFICE

FROM: Thomas E. Cook
Acting Assistant Commissioner
Office of Adjudications



SUBJECT: Adjudication of Form I-140 Petitions for Schedule-A Nurses Temporarily Unable to Obtain Social Security Cards

This memorandum addresses the adjudication of I-140 petitions filed on behalf of schedule A nurses and is being issued pursuant to formal written guidance to the Service from the U.S. Department of Labor (DOL) Employment and Training Administration. The guidance from DOL authorizes employers to receive a schedule A labor certification on behalf of a nurse, if the nurse has successfully passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) examination ~~in lieu~~ of either having passed the Commission on Graduates of Foreign Schools (CGFNS) examination or being in possession of a full and unrestricted (permanent) license to practice nursing in the state of intended employment.

Background:

In the past, in order for an I-140 petition to be approved for a schedule A nurse, the nurse must have either (1) passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination or (2) hold a full and unrestricted (permanent) license to practice nursing in the State of intended employment. However, many states license foreign nurses to practice nursing in the state notwithstanding the fact that the nurse has not taken the CGFNS examination,

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provided that the nurse has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN), a state licensing examination. Upon passage of the NCLEX-RN examination and prior to issuance of the state license, states may require proof of a social security number (SSN), submission of fingerprints, proof of a local residence, and other requirements that cannot be satisfied from abroad.

At present the NCLEX-RN examination can only be taken in the United States. Many of the foreign nurses who take the NCLEX-RN examination in the United States are admitted in a nonimmigrant classification (e.g., B-2 visitor for pleasure) that does not allow the foreign nurse to obtain a SSN required for licensure by the state. In such cases, the common practice is for the state nursing board to issue a letter to the nurse informing him or her that because he or she has passed the NCLEX-RN examination, the nurse will be granted a license to practice nursing in that state upon obtaining and submitting a valid SSN.

However, the Social Security Administration (SSA) will not issue a SSN to the alien in this situation without proof of employment authorization issued by the Immigration and Naturalization Service (the Service). A foreign nurse who has been temporarily admitted into the U.S. as a nonimmigrant (e.g., in B-2 status to sit for the NCLEX-RN exam) may not be authorized to work pursuant to his or her nonimmigrant status. Even in the case of an I-485 application concurrently filed together with an I-140 petition, a foreign nurse cannot obtain a valid SSN until he or she obtains an accepted form of employment authorization issued by the Service. Without an SSN, a nurse cannot obtain and present evidence of having been issued a full and unrestricted (permanent) state license for purposes of schedule A labor certification a requisite for approval of the I-140 petition.

Previously, the I-140 petition could not be approved for a foreign nurse admitted into the U.S. who had not taken the CGFNS examination or lacked evidence of actually being in possession of a full and unrestricted (permanent) state nursing license. This was because DOL regulations and policy did not extend eligibility for a schedule A labor certification to such individuals. However, on October 2, 2002, DOL advised the Service that, in adjudicating EB-3 petitions on behalf of nurses, the Service may also accept documentation that the alien beneficiary has passed the NCLEX-RN examination as eligibility for a schedule A labor certification. The DOL advises the Service that it will pursue conforming amendments to its regulations at 20 CFR 656.22(c)(2).

Guidance for Adjudication of an I-140 petition for a foreign nurse:

Provided that all other requirements applicable to the petition are met, this memorandum instructs all Service Centers to favorably consider the I-140 petition for a foreign nurse, as being eligible for a schedule A labor certification, upon presentation of a certified copy of a letter from the state of intended employment which confirms that the alien has passed the NCLEX-RN examination and is eligible to be issued a license to practice nursing in that state.

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The instruction in this guidance affects the adjudication of I-140 petitions only and makes no change to the requirements for adjustment of status or an immigrant visa. Aliens seeking adjustment of status or an immigrant visa under INA 203(b)(3) as a nurse must meet the requirements of INA 212(a)(5)(C) or 212(r).

Officers with questions about this guidance or the provisions of the DOL advisory may contact either Joe Holliday, HQISD, or Morrie Berez, HQADN, via ccMail, through appropriate channels.